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IN THE

SUPREME COURT OF THE UNITED STATES

No. [redacted] 172

HAROLD D CRAMER and VIOLA B. CRAMER, His Wife,
Petitioners,

vs.

E. ROMLE ROMINE and MARIAN S. ROMINE, his wife; LEROY COLLINS, Governor, RAY E. GREEN, Comptroller, J. EDWIN LARSON, Treasurer, RICHARD ERVIN, Attorney General and LEE THOMPSON, Commissioner of Agriculture as Trustees of the Internal Improvement Fund of the State of Florida,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

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IN THE

SUPREME COURT OF THE UNITED STATES

No.

HAROLD D. CRAMER and VIOLA B. CRAMER, His Wife,
Petitioners,

vs.

E. ROMLE ROMINE and MARIAN S. ROMINE, his wife; LEROY COLLINS, Governor, RAY E. GREEN, Comptroller, J. EDWIN LARSON, Treasurer, RICHARD ERVIN, Attorney General and LEE THOMPSON, Commissioner of Agriculture as Trustees of the Internal Improvement Fund of the State of Florida,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT.

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioners, HAROLD D. CRAMER and VIOLA B. CRAMER, his wife, seek by this their petition for a writ of certiorari to invoke a review by this court of a judgment of the District Court of Appeal of Florida, Third District, affirming a final decree of the Circuit Court of Monroe County, Florida, cancelling a grant of sovereignty land from the State of Florida to petitioners, which judgment was passed by the Supreme Court of Florida.

(a) Reference is made to Fla. 114 Southern Reporter 2nd 628, for the opinion and judgment of affirmance, the only opinion delivered below, copy of which and copy of said final decree are appended. Reference is made to appendix by the letter "A", to the record in the *nisi prius* court by the symbol "R1", to the record of the court of appeal by the sign "R2", and that in the Supreme Court by "R3".

(b) The jurisdiction of this court is invoked on the grounds that the final decree and its affirmance are devoid of support in the record and that said decisions are contrary to applicable decisions of this court.

(i) The final decree was dated and entered December 8, 1958. (R. 1, 22-25). The judgment of affirmance was dated and entered September 24, 1959. (R. 2, 2).

The Supreme Court of Florida denied certiorari January 26, 1960. (R. 3, 6).

(ii) Said court of appeal denied petition for rehearing October 14, 1959. (R. 2, 8). The Supreme Court of Florida denied petition for rehearing April 1, 1960. (R. 3, 11).

The mandate of the said court of appeal issued *April 5, 1960*. (R. 2, 9).

(iii) Jurisdiction to review said decree and its affirmance by writ of certiorari is conferred upon this court by Section 1257, Title 28, USCA.

(c) The questions presented for review are:

1. IS THE FINAL DECREE DEVOID OF SUPPORT BY THE RECORD SO THAT IT AND THE JUDGMENT AFFIRMING IT VIOLATE PETITIONERS' RIGHTS AFFORDED BY THE FOURTEENTH AMENDMENT?

2. ARE THE JUDGMENTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

(d) The case involves the following clause of the Fourteenth Amendment:

> "nor shall any state deprive any person of life, liberty, or property, without due process of law."

(e) The aspects and facts of the case material to the consideration of the questions presented are:

(1) The respondents, Romines, and the petitioners have been during the time involved upland owners on the Bay of Florida at Vaca Key in Monroe County. The other respondents are the present Governor and Cabinet officers, *ex officio*, trustees holding title to and managing the public lands of the state.

(2) The respective uplands of the Romines and petitioners are situated on the north shore of Vaca Key. The main navigation channel runs easterly and westerly along the north shore of this key and is reached from the foreshore of each of these tracts by going due north. (R. 1, 73, 84, 49).

(3) Each of these upland owners acquired their upland in April, 1951. (R. 1, 73, 84).

(4) Petitioners purchased their upland to build a new residence thereon and remove their residence thereto from Columbus, Ohio, which they accomplished in early 1952.

(5) On January 16, 1952, petitioners obtained the grant in question from the trustees then in office under and in pursuance of Chapter 253, Florida Statutes. (A) (R. 1, 9).

(6) On August 8, 1955, the then trustees, consisting of a different governor and comptroller but the same other officials, attempted to grant to respondents, Romines, a portion of this same land granted to petitioners together with other land. (R. 1, 76).

(7) As seen from the complaint, this conflict in grants and interest of the Romines on the one hand and petitioners on the other is the source of this litigation. (R. 1, 1-11).

(8) It should be noted at this point that by Chapter 253, *supra*, the trustees had title to the land and full power to grant it to petitioners; that the notice required was duly given (R. 1, 8-80); that the Romines and all interested parties were required in pursuance to the notice to make any objections which they might have to the proposed sale within 30 days, and to file their suit in equity within 15 days if the trustees overruled their objections.

(9) Instead of exercising their right in the manner and within the time limited by the said law under which the sale was made to petitioners, the respondents, Romines, joined by the trustees then in office, filed this suit on May 10, 1957, 5 years later. (R. 1, 1-11).

(10) Reduced to substance, the grounds alleged and upon which the final decree rests were: (1) that in making the grant, the trustees then in office relied upon inadequate information furnished them in and by the application of petitioners which failed to show the interests of the Romines in the land granted, (2) that the Romines, instead of petitioners, were entitled to purchase the land or a part of it under the statute, (3) that the notice published as required by the statute, proof of which was appended to the complaint (R. 1, 8), was insufficient.

(11) Motion to dismiss for failure to state a cause of action (R. 1, 12) was ordered carried forward to final hearing. (R. 1, 13).

(12) In their Answer (R. 1, 14-21), petitioners set up several defenses including their denial of the above mentioned allegations.

(13) Upon the trial of the issues raised, none of these issues was proven. *The record is devoid of any support for said complaint or the final decree!*

(14) The attack on the notice of sale was, by the same breath of the complaint, shown, by the proof of the publication thereof attached thereto, meritless. The Romines did not testify that they were misled by the notice, nor did either of them testify at all.

(15) None of the grantors, and none of the trustees testified. No one connected with the trustees as employee or otherwise at the time of the sale and grant to petitioners testified. The Director for the trustees, *at the time of the trial, but who was not employed by or connected with them at any time during the sale and grant to petitioners*, testified. (R. 1, 50-62). He admitted that he had no knowledge of the facts and information before the trustees when the grant in question was made.

(16) There was a total absence of any evidence to show that the trustees relied upon and were misled by the inadequate data furnished them by petitioners, so as to overcome the presumption that they acted upon the essential facts obtained by them upon due investigation and examination.

> "The presumption is that the trustees being public officials of the state, complied with their duty under the law, and that they correctly ascertained the facts warranting their action."
>
> (*Pembroke* v. *Peninsular Terminal Co.*, 108 Fla. 541, 146 So. 249-253).

(17) There was no showing, nor was there any finding, that the Romines, instead of petitioners, were entitled to have purchased the land, or any portion of it. Nor, if they had had such right, how that could properly bear

upon the grant to petitioners, in view of the due notice and default of objection and suit by the Romines, as required by Section 253.08, Florida Statutes, then in force (A).

(18) Undoubtedly, petitioners had a right to the application of such statute against the respondents, Romines, under the due process clause.

(19) And it was a violation of this right for these courts to refuse the due application of this statute, and decisions of this court herein cited, of which they were duly made aware, to this record, *which totally fails to support the complaint or the decree. This, ever increasing, heresy, that so falsely pretends that the wisdom of the court in the particular proceeding affords better justice than that channelled by and through the essentials of due process, must be stopped!*

(f) This violation of the Fourteenth Amendment, by the final decree in that it was devoid of support by anything in the record, was expressly raised and principally argued in the District Court of Appeal of Florida, Third District, in petitioners' main brief on assignment of errors (R. 1, 28-29), under "Point 1", reading as follows:

> "1. THE AMENDED BILL DOES NOT STATE A CAUSE OF ACTION NOR IS IT SUPPORTED BY THE EVIDENCE OR ANYTHING IN THE RECORD. (Assignments of Error, 1-4, 9-11.)"

and as shown by other extracts from petitioners' said brief (A).

(g) And in petition for rehearing to said court, in these words:

> "and which finding, decree and theory are each and all clearly shown by the record to be unsupported by the evidence or anything else." (R. 2, 6-7).

(h) The District Court of Appeal, by citing no principle of law nor reason whatever for its judgment of affirmance, virtually made itself *dernier ressort* of Florida Justice, in view of decisions and acquiescence of the State Supreme Court. (*N & L Auto Parts Co.* v. *Dorman et al.*, Fla., 117 Southern Reporter 2nd 410).

(i) However, petitioners did file in the Supreme Court of Florida, their petition for certiorari in which they were limited to setting up decisions of that court and another district court of appeal, alleged to be in direct conflict with the decision in question in the matter of estoppel. In their petition for rehearing, petitioners ventured to mention this violation of the due process clause.

(j) *Petitioners believe and assert that there is not more in the record to support the final decree than there was in the record to support the judgment in Thompson* v. *City of Louisville*, U.S. , 80 Supreme Court Reporter 624, 4 Lawyer Edition (2nd) 654.

"To set aside such a solemn instrument as" a grant from the State of Florida "the testimony on which this is done must be clear, unequivocal and convincing and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt." The words just quoted are from head note 6 by Justice Miller, when speaking of a patent issued by the United States in *U. S.* v. *Jacuto Tin Co.*, 125 U.S. 273, 31 L. Ed. 747:

(k)

> "The immense importance and necessity of the stability of titles depending upon these official instruments demand that suits to set aside and annul them should be sustained only when the allegations on which this is attempted are clearly stated and fully sustained by proof. * * *.

"It should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful."

(*United States v. Stinson*, 197 U.S. 200, 25 S. Ct. 426, 49 L. Ed. 724).

(b) It seems obvious that the one purpose of this suit (R. I. 1-11) was to regain this sovereignty land from petitioners in order to grant it to the respondents, Romines.

"When it is apparent that the only purpose of bringing the suit is to benefit one of two claimants to the land, and the government has no interest in the matter, the suit must fail."

(Head note 4 by Justice Miller, *U. S. v. San Jacinto Tin Co., et al., supra*).

Wherefore, petitioners pray the court to grant a writ of certiorari and its order, quashing the final decree and the judgment affirming it, hereby sought to be reviewed, with such other and further relief as shall seem right and proper to the Court.

JOHN G. SIMMS,
Attorney for Petitioners.

Pertinent sections of Chapter 253, Florida Statutes:

Section 253.13 "Trustees have power to sell; notice required; objections":

"The trustees of the internal improvement fund may sell and convey the islands and submerged lands, granted by section 253.12, upon such prices and terms as they see fit, after giving notice by publication in a newspaper published in the county seat of the county, in which such islands or submerged lands are located, not less than once a week for four consecutive weeks, in order that any persons who have objections to such sale may have opportunity to present the same; and, if no objections are filed within the said 30 days, the trustees have authority to consummate such sale. If objections are filed, the trustees shall hear and consider the same and, if it appears that the sale of such islands and submerged lands and their ownership by private persons would interfere with the rights granted riparian owners by the laws of Florida, or would be a serious impediment to navigation or public fisheries, the trustees shall withdraw the said lands from sale."

Section 253.14. "Rights of riparian owners; trustees to defend suit":

"It is expressly provided that nothing contained in this chapter shall be so construed as to deprive any private riparian owner from bringing an injunction suit in equity against the sale provided for in section 253.13 on the ground that he would be thereby deprived of his riparian rights granted to him by law; provided, that such suit must be commenced within thirty days after the trustees shall have overruled the objections of such owner to such proposed sale.

"In case suit is brought by any private owner to enjoin such sale it shall be in the discretion of the

trustees to defend such suit or to withdraw said land from sale."

(Note: The foregoing provisions were in force during the sale and grant to petitioners. In 1957, section 253.14, was expressly repealed and section 253.13, materially changed by Chapter 57-362, Laws of 1957, so that under the law as changed the land or a substantial portion of it could not be granted to petitioners, should that re-apply to purchase it as provided by the final decree.

FINAL DECREE (R. 1, 22-25).

(Caption Omitted.)

"THIS CAUSE came on to be heard upon the pleadings filed herein and testimony produced before the Court together with briefs filed by the Plaintiffs and Defendants.

The material facts in this case are substantially as follows:

The Plaintiffs, E. Romle Romine and Marian S. Romine, his wife, are the owners of upland property in the Bay of Florida in Monroe County, Florida. The Defendants are also the owners of upland property in the Bay of Florida in Monroe County, Florida. The Bay of Florida is a bay of the sea. The property of said Plaintiffs is near but not adjacent to the property of the Defendants.

In October, 1951, the Defendants applied to the Trustees of the Internal Improvement Fund of the State of Florida, one of the Plaintiffs herein, for a grant of submerged land alleged to be immediately adjacent to the uplands of the Defendants and as a part of said application, the Defendants supplied the said Trustees with a meager surveyor's sketch or drawing depicting the Defendants' upland property and the said sketch did not present the whole picture of the

rights of other upland owners in the vicinity including the Romines. The Defendants failed to show in said sketch the property of the Plaintiffs, Romines, and failed to show that the grant of such lands might infringe on the riparian rights of the said Plaintiffs and others not parties to this suit.

The Trustees relying on the representations made to them by the Defendants on January 16, 1952, granted to the Defendants for the sum of $276.00, the following described lands, to-wit:

> Commencing on the NW corner of Lot 18, VACA VILLAGE SUBDIVISION, a Resubdivision of Lots 7 and 8 OF THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2 at Page 24 of the Public Records of Monroe County, Florida, THE POINT OF BEGINNING, being on the M.H.W. Line of the Bay of Florida; thence North 700.00 feet; thence East 85.973 feet; thence South 690.38 feet to M.H.W. Line of the Bay of Florida; thence meandering the M.H.W. Line Southwesterly to the Point of Beginning. Containing 1.38 acres, more or less, and lying and being in Section 10, Township 66 South, Range 32 East, Monroe County, Florida.

The said grant was made by the Trustees on the application of the Defendants under and by virtue of Chapter 253, Florida Statutes. The Defendants disclosed to the Trustees only information between their property and the water and did not supply any information on any other property which faced the same body of water.

The Defendants are the present record title owners to the lands herein described. By this litigation, the Plaintiffs seek to set aside the deed from the Trustees to the Defendants.

The Court finds as follows:

(a) That the Defendants made an application to the said Trustees without making full disclosures and

the Trustees relying upon the application executed the said deed which they would not have granted had they had a complete survey showing the location of the property sold by them in relation to the upland property owned by the Romines and others.

(b) That the equities in this case are with the Plaintiffs and against the Defendants and that the deed executed by the Trustees to the Defendants should be set aside and that the Defendants should recover the sum of $276.00 which is in the registry of this Court as restitution.

(c) That the Motion to Dismiss heretofore filed by the Defendants should be denied. It is therefore

ORDERED, ADJUDGED AND DECREED as follows:

1. That the Motion to Dismiss the Amended Complaint filed by the Defendants be and the same is hereby denied.

2. That certain deed numbered 19969, dated January 16 1952, wherein the Trustees of the Internal Improvement Fund of the State of Florida are Grantors and Harold D. Cramer and Viola B. Cramer are Grantees, recorded in Book G-63, at Page 107 of the Public Records of Monroe County, Florida, for the grant, bargain, sale and conveyance of the following described lands, to-wit:

Commencing on the NW corner of Lot 18, VACA VILLAGE SUBDIVISION, a Resubdivision of Lots 7 and 8 of THOMPSON AND ADAMS SUBDIVISION, as recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida, THE POINT OF BEGINNING, being on the M.H.W. Line of the Bay of Florida; thence North 700.00 feet; thence East 85.973 feet; thence South 690.38 feet to M.H.W. Line of the Bay of Florida; thence meandering the M.H.W. Line Southwesterly to the Point of Beginning, Containing 1.38 acres, more or less, and lying

and being in Section 10, Township 66 South, Range 32 East, Monroe County, Florida.

be and the same is hereby set aside and cancelled of public record. The Clerk of this Court is ordered and directed to cancel said deed of record and to pay to the Defendants, Harold D. Cramer and Viola B. Cramer, the sum of $276.00 heretofore paid into the Registry of this Court by the Plaintiffs, Trustees, as restitution to said Defendants.

3. The Defendants are enjoined from filling in or bulkheading any submerged lands supposedly granted by virtue of the deed herein described.

4. The Plaintiffs, Romines, and the Defendants, Cramers, may re-apply to the Plaintiffs, Trustees, for a grant of the said submerged lands, and the Plaintiffs, Trustees, shall preserve the riparian rights of the upland owners as near as practical so as to equitably distribute the said submerged lands between all interested upland owners.

5. The costs in this cause shall be borne by each of the parties who has incurred the same.

DONE AND ORDERED in Chambers, at Key West, Monroe County, Florida, this 8th day of December, A.D., 1958.

s Aquilino Lopez, Jr.,
Circuit Judge.

District Court of Appeal, judgment and opinion of affirmance, caption and formal parts omitted:

"PER CURIAM.

"Affirmed. See Hayes v. Bowman, Fla. 1957, 91 So.2d 795." (R. 2, 2).

Order denying petition for rehearing:

"Counsel for appellants having filed in this cause petition for rehearing, and it having been considered,

it is ordered that said petition be and the same is denied." (R. 2, 8).

Supreme Court of Florida, order denying certiorari, caption and formal parts omitted:

"This cause having been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, Third District, in said cause bearing date September 24, 1959, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied." (R. 3, 6).

Order denying petition for rehearing:

"On consideration of the Petition for Rehearing filed by Attorney for Petitioners,

IT IS ORDERED by the Court that said petition be, and the same is hereby denied." (R. 3, 11).

Extracts from petitioners' main brief in the District Court of Appeal, Third District, raising the question of lack of due process:

"The theory of appellees, as shown by their pleading (R. 1-11), was that it is essential to the validity of appellants' grant that in applying for same they should have furnished the Trustees with such facts, information and data that upon the basis of that alone the Trustees could act, independently of any investigation by them or use of any maps, data or other information in their hands or available to them in the discharge of their official duties. That the appellants did not do this but had they done so the Trustees would not have made the grant to them; that the Romines, appellees, are entitled to purchase the bottoms sold to appellants, or a portion thereof.

"This theory shows up in the final decree, in the basic finding that 'the Trustees relying upon the ap-

plication' which was minus 'full disclosures' executed the said deed which they would not have granted had they had a complete survey showing the location of the property sold by them in relation to the upland owned by the Romines and others.

"The appellants will contend, among other things, that this finding exceeds the allegations of the amended complaint bill and is not supported by the evidence or anything in the record." (Pages 2-3).

"POINTS INVOLVED.

"1. The amended bill does not state a cause of action nor is it supported by the evidence or anything in the record. (Assignments of Error, 1-4, 9-11)." (Page 6).

"Actually, the only thing of substance proven by appellees was the said simple admitted fact that appellants' application showed nothing more nor less than their own upland with the desired bay bottoms adjacent thereto." (Page 8).

"There is no allegata nor probata in the record denying the presumption that the trustees obtained and had all of the facts and information which they should have had to make the sale and grant." (Page 21).

FILE COPY

Supreme Court of the United States

October Term, 1960

Supreme Court, U.S.
FILED
SEP 12 1960
JAMES R. BROWNING, Clerk

No. 172

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Respondents.

On Petition for Writ of Certiorari to the District Court Of Appeal of Florida, Third District

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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Respondents.

On Petition for Writ of Certiorari to the District Court Of Appeal of Florida, Third District

BRIEF FOR THE RESPONDENTS IN OPPOSITION

To The Supreme Court of The United States:

JURISDICTION

(1)

(b) The Petitioners invoke the jurisdiction of

this Court on the grounds that the final decree and its affirmance are devoid of support in the record, and that said decisions are contrary to the applicable decisions of this Court. Further, that the jurisdiction to review said decree and its affirmance by Writ of Certiorari is conferred upon this Court by Section 1257, Title 28, USCA.

The Petitioners have not shown that a State Court of Florida has decided a Federal question of substance not heretofore determined by this Court, or that a State Court of Florida has decided such a question in a way probably not in accord with applicable decisions of this Court.

In this case it affirmatively appears from the record that a decision of the Federal question was NOT necessary to the determination of the cause by the Florida Court, and that the determination of the cause rightfully rested upon adequate independent State grounds.

QUESTIONS PRESENTED

(d). The questions which the Petitioners present for review are:

1. IS THE FINAL DECREE DEVOID OF SUPPORT BY THE RECORD SO THAT IT AND THE JUDGMENT AFFIRMING IT VIOLATE PETITIONERS' RIGHTS AFFORDED BY THE FOURTEENTH AMENDMENT?

2. ARE THE JUDGMENTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

STATEMENT

The facts as found by the Trial Court (R1. 22, 25) may be summarized as follows:

1. The Petitioners and the Respondents Romines are the owners of upland property in the Bay of Florida in Monroe County, Florida. The Cramers' property is near, but not adjacent to the Romines' property. The Bay of Florida is a bay of the sea (R1. 22).

2. The Petitioners applied to the Respondents Trustees of the Internal Improvement Fund of the State of Florida for a grant of submerged land alleged to be immediately adjacent to the uplands of the Petitioners. As a part of said application, the Petitioners supplied the said Trustees with a meager surveyor's sketch or drawing depicting the Petitioners' upland property. The said sketch did not present the whole picture of the rights of other upland owners in the vicinity, including the Romines. The Petitioners failed to show in said sketch the property of the Respondents Romines, and failed to show that the grant of such lands might infringe on the riparian rights of the said Respondents and others not parties to this suit (R1. 22, 23).

3. The Trustees, relying on the representations made to them by the Petitioners, made a grant of submerged land to the Petitioners (R1. 23).

4. The Petitioners disclosed to the Trustees only information between their property and the water, and did not supply any information on any other property which faced the same body of water (R1. 23).

5. The Petitioners made an application to the Trustees without making full disclosures, and the Trustees, relying upon the application, executed the said deed which they would not have granted had they had a complete survey showing the location of the property sold by them in relation to the upland property owned by the Romines and others (R. 23).

ARGUMENT

PETITIONERS' QUESTION No. 1

IS THE FINAL DECREE DEVOID OF SUPPORT BY THE RECORD SO THAT IT AND THE JUDGMENT AFFIRMING IT VIOLATE PETITIONERS' RIGHTS AFFORDED BY THE FOURTEENTH AMENDMENT?

There is support in and by the record for the final decree. The question is not one of the sufficiency of the evidence, but whether the decree is supported by evidence.

In the case of **Thompson** v. **City of Louisville**, U. S. 80 S. Ct. 624, 4 L. Ed. 2d 654, this Court stated in part:

> "* * * The ultimate question presented to us is whether the charges against petitioner were so totally devoid of evidentiary support as to render his conviction unconstitutional under the Due Process Clause of the Fourteenth Amendment. Decision of this question turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all."

The Petitioners rely upon the case of **U. S. v. San Jacinto Tin Co.**, 125 U. S. 247, 31 L. Ed. 747. In that case what was urged as satisfactory evidence of a fraud was really little but suspicion, fierce denunciation and a bitter use of such words as "fraud", "deceit" and "imposition".

Turning to the record to show support thereby for the final decree we find clear and convincing evidence in the record to support the decree as follows:

1. The Respondents Trustees required the Petitioners to furnish a survey by a registered surveyor, and to advise the Respondents Trustees of all pertinent facts relating to the applicants' right to purchase and to assist the Trustees in allocating to the applicants and to other adjacent owners their rightful portion of the submerged bottom lands (R1. 68). The Petitioners were required to furnish a survey and plat prepared by a registered engineer, giving an accurate description of the land applied for, said description to be tied into an established government corner (R1. 44, 45).

2. The Petitioners instructed their surveyor to show roughly 700 feet out by the width of their property, with the end in view of applying for bay bottom, which is what the surveyor did, the surveyor feeling that the same would not be " . . . unethical or unprofessional . . . " (R1. 44, 45).

3. The Petitioners thereby submitted to the Respondents Trustees a meager sketch (Pl. Ex. 6; R1. 43, 78), which said sketch bore a certificate which stated in part that it was certified, " . . . that there are no encroachments . . . except as shown." The Petitioners misrepresented the true facts inasmuch as there was an encroach-

ment upon the riparian rights of the Respondents Romines and others (Def. Ex. 1; R1. 63, 88). The application of the Petitioners failed to show that such a grant to them would cut off and close the right of ingress and egress of a cove in existence between their uplands and the uplands of the Romines (Def. Ex. 1; R1. 62, 63, 88).

4. From the meager surveyor's sketch (Pl. Ex. 6; R1. 41, 42, 43, 44, 78), submitted by the Petitioners to the Respondents Trustees, it was made to appear that Petitioners' subdivision, that is, Vaca Village Subdivision, was the only subdivision in the area. The upland property of the Respondents Romines is in a subdivision other than Vaca Village Subdivision and, in fact, is removed therefrom by an intervening subdivision (Def. Ex. 1; R1. 63, 88).

5. The grant from the Respondents Trustees to the Petitioners contained a portion of two (2) small islands (Def. Ex. 1; R1. 63, 88). The act of the Petitioners was so misleading that the grant from the Respondents Trustees included a portion of these two (2) small islands which were owned by the United States (Def. Ex. 8; R1. 64, 97).

6. Florida has a general coastline of 1,197 miles. Florida's detailed tidal shoreline (including bays, sounds and other bodies) measures 8,426 statute miles (R1. 53).

7. In the late summer of 1951 (R1. 65) when Petitioners sought to acquire the grant from the Trustees, the Trustees did not have a complete set of maps in Tallahassee (R1. 593). There had to be a reliance upon the applicant for assistance in allocating rightful portions of submerged bottom lands (R1. 58) and to make equitable

fair divisions of the bottom lands which would preserve navigability and access rights and riparian rights of all affected and concerned (R1. 61).

8. The land involved in this litigation is submerged land and has never been filled. No improvements have been made to this bay bottom (R1. 68). The house on the upland belonging to the Petitioners was started before they acquired the grant in question (R1. 68, 69).

9. Subsequent to the application of the Petitioners, the Respondents Romines made an application to the Respondents Trustees for a grant of submerged land adjacent to their upland (Pl Ex. 1; R1. 33, 72). The grant was made, but not recorded. The grant to the Petitioners and to the Respondents Romines was in conflict (R1. 57).

It is evident that the Respondents Trustees relied to their detriment on the act of the Petitioners in furnishing the said Trustees the meager sketch for the stated purpose of obtaining the land grant.

The final decree is not devoid of support by the record. The testimony and evidence upon which the grant was set aside is clear, univocal and convincing.

PETITIONERS' QUESTION No. 2

ARE THE JUDGMENTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

The judgments sought to be reviewed are not contrary to applicable decisions of this Court. It was not

necessary for the Florida Courts to decide a Federal question. The judgments of the Florida Courts were based upon applicable Florida law.

We would re-state the Petitioners' second question as follows:

> WHERE, THROUGH MISREPRESENTATION, WITHOUT MAKING FULL DISCLOSURE, PETITIONERS OBTAINED A GRANT FROM RESPONDENTS TRUSTEES, WHICH INCLUDED GOVERNMENT LAND AND RIPARIAN RIGHTS OF OTHERS AND WHICH DID NOT EQUITABLY DISTRIBUTE SUBMERGED LANDS BETWEEN UPLAND OWNERS AND CHANNEL, AND
>
> WHERE THE FLORIDA TRIAL COURT SET ASIDE THE GRANT AND ALLOWED REAPPLICATION FOR A GRANT OF SUBMERGED LANDS WHICH WOULD PRESERVE RIPARIAN RIGHTS OF UPLAND OWNERS AS NEAR AS PRACTICABLE AND ALLOW EQUITABLE DISTRIBUTION,
>
> ARE THE JUDGMENTS OF THE FLORIDA COURTS SOUGHT TO BE REVIEWED CONTRARY TO APPLICABLE DECISIONS OF THIS COURT?

We answer the question in the negative.

In the case at bar there was a material misrepresentation on the part of the Petitioners (R1. 44, 45) (Def

Ex. 1; R1. 62. 63, 88) in obtaining the grant from the Respondents Trustees.

In **Langley** v. **Irons Land & Development Co.**, 94 Fla. 1010, 114 So. 769 (text p. 771), the Supreme Court of Florida quoted 9 Corpus Juris, 1169, Sec. 23:

> "'**Innocent misrepresentation of fact.** According to the weight of authority, misrepresentation of material facts, although innocently made, if acted on by the other party to his detriment, will constitute a sufficient ground for rescission and cancellation in equity. The real inquiry is not whether the party making the representation knew it to be false, but whether the other party believed it to be true and was misled by it in making the contract; and, whether the misrepresentation is made innocently or knowingly, the effect is the same. It is as conclusive a ground of relief in equity as a willful and false assertion, for it operates as a surprise and imposition on the other party, and in such case the party must be held to his representations.'"

In setting the grant aside (R1. 22, 25), the Trial Court based its decision upon applicable Florida law. The order (R2. 2) of The District Court of Appeal of Florida, Third District, which affirmed the Trial Court was founded upon independent Florida grounds. See **Hayes** v. **Bowman**, Fla. 1957, 91 So. 2d 795.

In the case of **Hayes** v. **Bowman**, supra, the Supreme Court of Florida stated in part (text p. 801, par. 6, 7):

"We are therefore of the view and must hold that the common law riparian rights to an unobstructed view and access to the Channel over the foreshore across the waters toward the Channel must be recognized over an area as near 'as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. This rule means that each case necessarily must turn on the factual circumstances there presented and no geometric theorem can be formulated to govern all cases. An upland owner must in all cases be permitted a direct, unobstructed view of the Channel and as well a direct, unobstructed means of ingress and egress over the foreshore and tidal waters to the Channel. If the exercise of these rights is prevented, the upland owner is entitled to relief."

(Text page 802, para. 10):

"We therefore prescribe the rule that in any given case the riparian rights of an upland owner must be preserved over an area 'as near as practicable' in the direction of the Channel so as to distribute equitably the submerged lands between the upland and the Channel. In making such 'equitable distribution' the Court necessarily must give due consideration to the lay of the upland shore line, the direction of the Channel and the corelative rights of adjoining upland owners."

In the case of **Dan Purley** v. **Nathan Mayo**, 351 U. S

277, 100 L. Ed. 1178, 78 S. Ct. 806, this Court stated in part:

> "It is a well established principle of this Court that before we will review a decision of a state court, it must affirmatively appear from the record that the federal question was presented to the highest court of the State having jurisdiction and that its decision of the federal question was necessary to its determination of the cause. **Honeyman** v. **Hanan**, 300 U. S. 14, 18; **Lynch** v. **New York**, 293 U. S. 32."

The Interest of the Respondents Trustees

1. The Petitioners argue that the one purpose of this suit (Rl. 1-11) was to regain this sovereignty land from the Petitioners in order to grant it to the Respondents Romines. The Petitioners rely in part on **U. S.** v. **San Jacinto Tin Co.**, that when it is apparent that the only purpose of bringing the suit is to benefit one of two claimants to the land, and the Government has no interest in the matter, the suit must fail.

2. In the final decree of the Trial Court (Rl. 22, 25) the grant in question was cancelled, but it was ordered that the Petitioners Cramers and the Respondents Romines may re-apply to the Respondents Trustees for a grant of the submerged lands, and that the Respondents Trustees

> "... shall preserve the riparian rights of the upland owners as near as practical so as to equitably distribute the submerged lands between all interested upland owners." (Rl. 24, 25).

CONCLUSION

The record clearly shows that: the final decree is supported by the record; the final decree and the judgment affirming it do not violate petitioners' rights afforded by the Fourteenth Amendment; the judgments sought to be reviewed are not contrary to applicable decisions of this Court; the decision and judgment of the courts of Florida are based upon applicable Florida law and are not in conflict or contrary to any decisions of this Court.

On the grounds disclosed in this Brief of Respondents, this cause should not be reviewed by this Court.

WHEREFORE, the Respondents pray that this Court will refuse to grant a writ of certiorari.

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, in compliance with Paragraph 1, Rule 33 of the Revised Rules of the Supreme Court of the United States, a copy of the foregoing Brief for the Respondents was served upon the HONORABLE JOHN G. SIMMS, counsel of record for the Petitioners, by depositing said copy in a United States mail box, with first class postage prepaid, addressed to said counsel of record at his post office address, Route 2, Box 240, Homestead, Florida, this 10th day of September, 1960.

Richard W. Ervin

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